IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 22346 of 2000

Between:

G.Satyanandam, S/o.Durgaiah, District Extension Media Officer,
Office of the District Medical & Health Office, Warangal,
Warangal District.

..... PETITIONER

AND

1 The Registrar, A.P. Administrative Tribunal, Hyderabad.
2 The Commissioner, Family Welfare, A.P., Koti, Hyderabad.
3 The Principal Secretary, Government of Andhra Pradesh,
Medical, Health & Family Welfare Department, Secretariat,
Hyderabad.
4 Smt.Shakuntala, Health Educational Instructor,
Office of the Regional Training Centre (Male) Koti, Hyderabad.
5 Smt.Samanthakamani, Health Education Officer,
Office of the Commissioner, Family Welfare, A.P., Koti,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd Respondent in not including the name of the petitioner in Departmental Promotion Committee for promotion to the post of Deputy Director Mass Education Media Commissioner Family Welfare, and not considering the case of the petitioner for promotion as illegal, improper, arbitrary, unreasonable and set aside the same and also set aside the order passed by the

Hon'ble Tribunal in O.A.No.6190/2000 dt.8-11-2000 dismissing the claim of the petitioner for promotion to the post of Deputy Director, Mass Education Media, Commissioner Family Welfare and direct the 2nd Respondent to promote the Petitioner as Deputy Director, Mass Education Media, Commissioner Family Welfare.

Counsel for the Petitioner: MR.V.MADHUSUDANA RAO

Counsel for the Respondents:1 to 3 GP FOR SERVICES II

Counsel for respondents 4 and 5: Mr.M.Surendra Desai

The Court made the following:

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (hereinafter referred to as the Tribunal) in O.A.No.6190 of 2000, dated 8.11.2001.

2. The petitioner is the applicant before the Tribunal. He filed the above OA seeking direction to declare the action of the 1st respondent in not including the name of the petitioner in the panel for promotion to the post of Deputy Director, Mass Media, Commissioner of Family Welfare and also declare the action of the 1st respondent in including the names of respondents 3 and 4 in the panel for promotion to the post of Deputy Director, Mass Media as illegal, improper, arbitrary and contrary to the ad hoc rules issued in G.O.Ms.No.442, Medical and Health (M2) Department, dated 5.7.1979 and further direct the 1st respondent to include the name of the petitioner in the panel for promotion to the post of Deputy Director, Mass Media, Commissioner of Family Welfare and consider the case of the petitioner for promotion to the post of Deputy Director, Mass Media and pay all consequential benefits.

3. It is the case of the petitioner that he was initially appointed as Health Inspector in 1970 and subsequently promoted as District Extension Educator (Male) in the year 1973 and later he was promoted as Health Educational Extension Officer in the year 1980 and he was further promoted as District Extension and Media Officer (DEMO) in 1991. The grievance of the petitioner is that the unofficial respondents were not eligible to be included in the category for promotion to the post of Deputy Director, Mass Media, and the Rules do not contemplate inclusion of such persons and therefore the very inclusion of their names is illegal and contrary to the Rules. Even otherwise the learned counsel for the petitioner would submit that when the seniority list was finalized, it was not put on notice to the petitioner and therefore he could not make any objections to the seniority list. He also submits that as the unofficial

respondents were given only paper promotion with retrospective effect, such paper promotion shall not be taken into consideration while fixing the seniority. Therefore the learned counsel submits that the order of the Tribunal is illegal and contrary to law.

4. The learned Tribunal while considering the aspect as to whether the seniority list was finalized without putting on notice to the petitioner, observed as follows:

> "In view of the facts mentioned by the learned GP and the material ploaced by him through the brief note, it is evident that the post occupied by the applicant and also the posts occupied by the unofficial respondents are the feeder categories for the post of Deputy Director. Further it is also evident that a seniority list of DEMOs and allied categories is also communicated by the Commissioner of Family Welfare on 18.12.1999 and in that list, the applicant is shown as junior to the unofficial respondents. Hence in such circumstances we find no reasons to interfere with the action of the official respondents in considering the cases of R3 and R4 for promotion as Deputy Director earlier to the applicant as per seniority list. The applicant, without questioning the seniority list dated 18.12.1999 in which he was shown as junior to the unofficial respondents, cannot claim any preference for considering his name even before the claims of R3 and R4 are considered for promotion as Deputy Director. Further it is also established that R3 and R4 also belongs to the feeder categories and they are seniors to the applicant. Hence, we find no merits in the contentions of the applicant. The OA is, therefore, liable to be dismissed and it is accordingly dismissed and the interim order is hereby vacated. No costs".

5. The learned counsel for the unofficial respondents, however, submits that the petitioner has not agitated this aspect even in the OA before the Tribunal. We have perused the OA filed before the Tribunal and it shows that the petitioner has not made any such grievance except stating that the DPC has included the names of the unofficial respondents basing on the seniority. In this regard, para (g) in the above OA is relevant, which is extracted below:

> "The applicant respectfully submits that he is kept in dark relating to the promotional post which is fallen vacant and the respondents hurriedly appeared to have conducted DPC and considered the names of 3rd and 4th respondents solely on the reason that they are seniors to the applicant. The action of the 1st respondent in recommending the names of 3rd and 4th respondents ignoring the *ad hoc* rules framed is arbitrary, unreasonable, illegal, improper and it is just that the

proceedings of DPC and the recommendations of DPC shall be set aside forthwith otherwise the applicant will suffer irreparable loss and injury"

6. The above para would amply clarifies the situation that the petitioner has knowledge about the seniority list, but he has not chosen to file any objections.

7. The learned counsel for the petitioner, however, submits that the Tribunal based its findings only on the strength of the note circulated to the Tribunal at the time of hearing the matter. But this argument makes irrelevant for the purpose of this case inasmuch as the petitioner has not made any grievance about the finalisation of the seniority list. When once the integrated seniority list has been finalized and the petitioner has not made any objections with regard to the fixation of *inter se* seniority, it is not open for him to challenge the consequential promotion basing on the said seniority.

8. Though the learned counsel for the petitioner before this Court makes an earnest effort to contend that the promotion given to the unofficial respondents is only a paper promotion and the same cannot be taken into consideration for purpose of fixing the seniority, the same cannot be accepted inasmuch as final seniority has been published on 18.12.1999 and the petitioner has not chosen to challenge that order, it is not open for him to take the contention that they were not properly promoted. Under these circumstances, we do not find any flaw in the order of the Tribunal and we also find that the Writ Petition is devoid of merit.

9. Accordingly the Writ Petition is dismissed. No costs.

(G.BIKSHAPATHY, J.)

18th March, 2005.

(P.S.NARAYANA, J.)

SSR

To

1 The Registrar, A.P. Administrative Tribunal, Hyderabad.
2 The Commissioner, Family Welfare, A.P., Koti, Hyderabad.
3 The Principal Secretary, Government of Andhra Pradesh,
Medical, Health & Family Welfare Department, Secretariat,
Hyderabad.
4 2 CCs to G.P. for Services-II, High Court of A.P. Hyderabad. (OUT)

5 2 CD copies

6 1 CC to MR.SURENDRA DESAI

*Form-NIC-OGS/WP{**TML**}*